DEPUTY PRESIDENT : I rule that what Mr. Varughese says is quite out of order, for while it is open to every member of the House to propose any individual member, a vague suggestion that a member representing somebody is no motion before the House. Mr. Varughese is so entirely out of order.

THE TRAVANCORE SURVEY AND BOUNDARIES REGULATION (AMENDMENT) BILL.

Clause I.

MR. A. S. DAMODARAN ASAN (*Mavelikara*) : Sir, I beg to move the following amendment :—

"In Clause I, sub-clause (1) "1112" may be substituted for "1110""

Sir, this Bill was passed in the Sri Chitra State Council in 1110 and was expected that it will become law also in 1110. That is why it is called Travancore Survey and Boundaries Regulation (Amendment) Bill of 1110. Now we are in 1112 and so it is only right that the short title should agree to the date in which the Regulation was passed.

MR. K. KUNJUKRISHNA PILLAI (*Quilon I*) : I second the motion.

The motion was carried.

Clause I as amended was added to the Bill.

Clause II.

MR. A. S. DAMODARAN ASAN (*Mavelikara*) : Sir, I beg to move the following amendment :—

"In Clause II, under Section 34 (2) delete the portion beginning with "but" in line 4 and ending with "Survey mark" in line 6 and insert the words "where such mark or object has been proved to be erected or placed by the accused" between the words "and" and "recover" in line 8.

The object of this Amendment Bill is to have a provision for punishing persons who erect any counterfeit survey mark and to give power to courts to remove such survey marks. For that, it is stated that a prosecution may be launched by a complaint by the Tahsildar or by a complaint filed with the sanction of the Tahsildar. In sub-clause I it is stated that "whoever erects or places any mark or object which is not a survey mark intending or knowing it to be likely that such mark or object may be understood or believed to be a survey mark shall, on conviction, be punishable with fine which may extend to one hundred rupees." In order to convict the accused there must be an act accompanied with intention or knowledge. If the act is not accompanied by intention or knowledge there is no offence. Sub-clause (2) provides for cases in which the accused is not convicted. The accused will be acquitted in cases in which the act is not proved to be intentional and also in cases in which there is no proof even as regards the act against the accused. Even in those cases sub-clause (2) says that power must be left with the court to remove such survey mark and recover the cost from the accused. My objection to the Clause as it stands is this. The first part of my amendment relates to the deletion of the portion beginning with "but "and closing with " survey mark" and it will be found that under the present Bill even though the court

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[Mr. A. S. Damodaran Asan.]

finds that there is a counterfeit survey mark it can remove or order the removal only if it is proved that that mark was erected or placed by anybody with the intention or belief that it was likely to be understood as a real survey mark. So the court has to come to the conclusion, before ordering the removal, that that mark was erected or placed by somebody other than the accused and that it was with the intention or knowledge that it would be understood as a real survey mark. But the power to remove a survey mark must be vested in the court and a court need only see whether counterfeit survey marks were standing so as to mislead the boundaries and they will have to take the evidence from the owners of adjacent lands. So, whenever a counterfiet survey mark is found to be such by the court and where the court thinks the removal of the same is necessary in the interest of the owners of the property, the court must have ample powers to remove the same whether any intention or knowledge existed in the mind of anybody. Hence I am submitting that that portion must be deleted.

With regard to the second part of the amendment, I have suggested the words "where such mark or object has been proved to be erected or placed by the accused" between the words "and" and "recover". If the Clause is allowed to stand as in the Bill the accused will be bound to pay the cost of removing the survey stone even if it was not erected or placed by him. If the court comes to the conclusion that he is innocent of the whole charge there is no reason why the charges or cost should be recovered from that accused. So I have stated that cost is to be recovered from the accused only if it is proved that the survey mark was erected or placed by the accused himself. Sir, if my amendment is accepted, it would so change the Clause as it stands as to save the accused from the liability for the wrong acts of a different person. With these words I move the amendment for the consideration of the House.

MR. S. J. NAIR (*Nedumangad*): In supporting the amendment I might say that in sub-clause (2) it is stated that the court can order the removal of a survey mark but the court will have to enter an additional finding that it was erected by somebody with the knowledge and belief that it was a survey mark. Therefore the second finding that the particular mark was placed with the intention or knowledge that it was a real survey mark has to be made. Suppose the court finds that the mark is not a real survey mark but it was placed without any particular intention or knowledge. If the court finds that though the mark was placed there without the intention of being taken to be a survey mark, it will be taken as a survey mark, even then the court cannot remove it, though there is a finding that the mark is not a real one. I think, Sir, even in cases where with particular intention or knowledge a real survey mark was removed power is given to the court to put and remove the counterfeit survey marks. The court is given power to recover the charges even if he is found innocent. If anyone is convicted of an offence he may be asked to give the cost or compensation. Otherwise there is no necessity to ask him; and to do so is unreasonable, untenable and unjust.

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MR. R. RAMAN PILLAI (*Changanachery* cum *Peermade II*): I support the amendment. I believe Sir, that the framer of the Bill made this Clause and the Upper House passed the same with the belief that there is a presumption that the boundary marks are correctly made.

DEPUTY PRESIDENT: The reason which weighed with the members of the other House is not a matter for this House.

MR. R. RAMAN PILLAI (*Changanachery* cum *Peermade II*): Sir, the survey marks are faulty. The surveyor is faulty the chain is faulty, the pointer is faulty and the scale is faulty. I will explain and I will bring home to each and every member that all these instruments are faulty. From my own experience I know that these are faulty. The scale may have been very well made but becomes useless by daily using the dividers. The point of the dividers also become blunt. The chain becomes daily longer and longer.

MR. KAYALAM PARAMESVARAN PILLAI (*Additional Head Sirkar Vakil*): On a point of order. Is this relevant to the motion before the House?

DEPUTY PRESIDENT: The position of the survey stones is a relevant matter.

MR. R. RAMAN PILLAI (*Changanachery* cum *Peermade II*): I say this in order to show that the accused should not be punished unless it was proved that he planted the counterfeit mark.

I say that the papers, wherein the marks are found, are entirely incorrect. These papers cannot in the least be relied on. It must be proved that the accused intentionally made or planted a counterfeit mark. I had to survey a plot of about 7 000 acres. While I was doing so, I had to do the work of a Theodolite Surveyor. I found that there were seven boundary marks without any angular or side measurements and also five angular and side measurements without any boundary stones. What is that due to? The only reason is that the surveyors did not do the work properly. They were doing the work sitting on a two-storied bungalow. Perhaps, they might have done the work during the hotest part of the day.

DEPUTY PRESIDENT: All those are irrelevant.

MR. R. RAMAN PILLAI (*Changanachery* cum *Peermade II*): Sir, these records cannot be relied on and the accused cannot be punished unless it is shown that he intentionally planted the counterfeit mark. With these words I support Mr. Asan's amendment.

MR. PUTHUPALLI S. KRISHNA PILLAI (*Quilon II*): There are not many people in the State who do not own a small plot of ground and therefore this piece of legislation, it must be understood, is one which will affect the majority of the people in this State, and the provision under discussion becomes all the more important because of that. I regret, Sir, to observe that this provision has been ill-conceived and that it offends against all accepted principles of legislation. Sir, when a civil court is invested with powers to direct the defendant to do a particular act, it can exercise the power only when it finds that the defendant has by omission or commission made some invasion of the

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[Mr. Puthupalli S. Krishna Pillai.]

petty rights. In the absence of such finding, the court has no power over the defendant. When the plaintiff's suit is dismissed, no order is granted to the plaintiff for taking out any compulsory process against the defendant. It is a plain rule which we know fully well. Now the jurisdiction of a criminal court is equally limited if not more. It continues to exercise jurisdiction over an individual only so long as he is suspected of some criminal act or so long as he is found to be a criminal. When once he is admitted or found to be innocent, the criminal court has no power to impose any restriction on him. When a prosecution is lodged and if it is found that the prosecution has been a malicious one, the criminal court is invested with the power to direct that the accused be compensated. If the prosecution is found to be true and the accused is guilty, the criminal court is authorised to impose a fine on him. In certain cases, out of the fine thus imposed a portion can be given to the complainant. When it is found that the accused is innocent and that the complaint would not stand, what is the jurisdiction that the criminal court has over the actions of the accused or over the accused himself?

Let us see the provision contained in this Bill. The last portion says, "The court may cause the mark or object to be removed and recover the cost of the removal from the accused", whether the accused be convicted or not, *i. e.*, even when the accused is found to be innocent.

It enables the court to impose a fine upon a person who is not guilty. Now, the expenses are said to be recoverable from a person who is not found to have done anything. Probably the word 'fine' relates only to the method of realisation of the cost. If I am found to be innocent, could it be said that the court may be empowered to direct the recovery of the cost from me? Is there any law, in any civilized country, which enables one to impose penalty on his innocent neighbour? Has a criminal court been authorised to penalise an innocent man? We have enacted several statutes, good, bad and indifferent. Not one of these can claim absurdity so conspicuous as the one contained in this Bill.

There is another, and a more obvious mistake. It is stated "In any case of prosecution started under the foregoing provision, the court may, whether the accused be convicted or not, order the mark or object to be removed if the court is satisfied that it is not a real survey mark."

The court may "order" the mark or object to be removed. Order whom? Order the Head Clerk of the court or any person walking along the road?

DEPUTY PRESIDENT: Any person who may obey the orders of the court.

MR. PUTHUPALLI S. KRISHNA PILLAI (*Quilon II*): Every person in this country is bound to obey the order of a duly constituted court and no exemption is granted in favour of any individual. When it does not say whom, it may order anybody. It may be to remove a

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stone found in some honourable member's boundary. If I do not obey it, who shall pay the penalty. The accused? (*Laughter.*) "Whether the accused be convicted or not order the mark or object to be removed, if the court is satisfied that it is not a real survey mark, but was erected or placed by *anybody* intending or knowing it to be likely that such mark or object may be understood or believed to be a survey mark and in case the mark or the object is not removed accordingly, the court may cause the mark or object to be removed and recover the cost of the removal from the accused." Anybody including the complainant or a neighbouring mischief maker! Can anything be more ridiculous than this? Is there any power which could be invested in a court of law enabling it to compel a person who is found to be innocent, to incur expense and compensate for an act of any one in the world? Is there any power invested in this Legislature to penalise innocent men? I can understand if it were said that a particular person might be ordered to do it; and if in case he did not, the court might remove it. There is sense in that. According to this Bill the court is competent to punish an innocent man and I submit I must be exempted from this (*Laughter*). If this House will not take any other thing into consideration, it must at least take note of my grievances.

DEPUTY PRESIDENT: The personal grievance of a particular member is not quite relevant.

MR. PUTHUPALLI S. KRISHNA PILLAI (*Quilon II*): I was only pointing to the general grievance which was common to me, and I was submitting that what was a grievance to me was a grievance to every one because, I have very few grievances. (*Hear, hear*). I therefore submit that this Section is ill-conceived, ill-drafted, improper and contrary to the accepted canons of legislation. It is a matter which curtails the rights and liberties of individual citizens and it is calculated to penalise innocent men. Mr. Damodaran Asan's amendment may, to a certain extent, remedy these defects. But still, there will be the vagueness about the individual whom the court may "order" to remove the stone. For my part, I am prepared to take the best of a bad bargain. This Section is for our consideration now. It should not be said hereafter that we did not understand, that we did not fully comprehend the implication of this Section. Anybody might be ordered to-morrow, even though he might be innocent. My submission is that, however good it may be to the land-owner, however convenient to the *draftsman*, it is always a trouble to the innocent and to the landless, and to this House it will be an everlasting disgrace. With these words I support the amendment.

MR. K. R. ELENKATH (*Kalkulam I*): Sir, I rise to support the first part, that is with regard to the omission, and to oppose the second part.

DEPUTY PRESIDENT: The amendment cannot be split up like that.

MR. KAYALAM PARAMESVARAN PILLAI (*Additional Head Sirkar Vakil*): Sir, if you call upon me to...

DEPUTY PRESIDENT: Seeing that Mr. Elenkath is not able to support or oppose the Bill, it is better to ask the Law Member.

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MR. KAYALAM PARAMESVARAN PILLAI (*Additional Head Sirkar Vakil*): The question that arises is very simple. I shall not take any notice of the flights of imagination indulged in by some in this House. On the amendment, I am prepared to accept the first part of it. With regard to the second part too, I have no serious opposition. I will merely place before the House the real position as it stands.

The provision as it is in the Bill vests in the courts a discretion. The Court may order a stone to be removed but the court is not bound to do it in every case. It is presumed that the court will exercise the discretion properly. The provision further says that it should be left to the court to decide in which cases the accused should be asked to pay the costs of the removal of the stones. The idea is to confer on the court complete discretion in the matter.

Now, Mr. Asan, in the second part of his amendment, wants to limit the discretion of the ocurt. He says that the court should ask the accused to bear the cost of removal of the stones only if it has been proved that the stone was planted by or at the instance of the accused. No doubt, there is a principle in what Mr. Asan says. But, even the provision as it is is based on a principle. It is this. If a stone is found planted in A's property, the presumption is that it has been so planted by or at the instance of A. I would point out to Mr. Asan that, proof, especially in criminal cases, means strict proof which may not be forthcoming in every case. Still, it may be that the accused should rightly bear the cost of the removal of the stone because, say, there is good room for suspicion against him and the stone is found in his land. It is expected that the Court will exercise a sound descretion in every case. There is no reason to think that the court will act arbitrarily and it may not be possible to lay down a rule of general application. That is why the court is proposed to be given a discretion in the matter of asking the accused to pay the cost of removal of the stones. In civil cases, even where the plaintiff has won the case, in some instances the plaintiff is not allowed his cost of suit, and it happens that he is even asked to pay the costs of the defendant in some cases. Similarly, in criminal trespass, although the accused may be found not guilty, he may be forcibly evicted from a land. Therefore, it is not always a question of real guilt in the matter of charging the costs. In the present case it is also a question of public policy. If the court has reasons to think that the accused might have been responsible for the act, although proof in the strict legal sense might not be available, he might be asked to pay the cost. I do not see anything wrong in such discretion being vested in the courts. But, if the House is not prepared to trust the court with such discretion, which perhaps is wide, the House may accept the second part also of Mr. Asan's amendment.

DEPUTY PRESIDENT: So, you do not accept the amendment?

MR. KAYALAM PARAMESVARAN PILLAI (*Additional Head Sirkar Vakil*): I accept the first part of the amendment. In regard to the second part of the amendment I do not oppose. I merely wanted to explain the actual position, and I have done it.

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MR. K. C. ABRAHAM (*Kottayam II*). Apart from the question of practicability, is it meant as a principle of the Bill that every land-owner should, as a matter of duty, maintain the boundary marks as they are ?

MR. KAYALAM PARAMESVARAN PILLAI (*Additional Head Sirkar Vakil*) : No, not under this Bill. There is another law for it.

DEPUTY PRESIDENT : I shall split up the amendment into two parts and put them to vote one after another.

The first part of the amendment was put to vote and carried.

DEPUTY PRESIDENT : Before I put the second part of the amendment to the vote of the House, I wish to say a few words. The point is whether, when a person is found to be not guilty, he could be made to pay the expenses incurred in the removal of the stones as ordered by the courts. The Law Member's explanation, in support of the provision now sought to be amended, is that, though under the strict principles of criminal law different views may be taken on this question, as a matter of public convenience, it will be good to have the provision in the Bill, especially because—as I understood him—it is not likely that a stone would have been planted in a person's compound except with his knowledge.

The second part of the amendment was put to vote and carried.

The question that the Clause, as amended, stand part of the Bill was then put to vote and carried.

The Clause as amended was added to the Bill.

Preamble and Title

The question that the Preamble and the Title stand part of the Bill was put to vote and carried.

The Preamble and Title were added to the Bill.

MR. KAYALAM PARAMESVARAN PILLAI (*Additional Head Sirkar Vakil*) : The Bill has been long before the House, and I trust that the House will not have any objection to have the third reading of the Bill even now. With your permission, Sir, I move that the Bill be passed.

MR. C. V. CHANDRASEKHARAN (*Ag. Director of Public Instruction*) : I second it.

The motion was put to vote and carried.

The Bill was passed.

The House adjourned at 8-10 P. M.

P. PARAMESVARAN PILLAI,
Secretary to the Sri Mulam Assembly.

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